

Of this phase of the act this court said in the *Jin Fuey Moy Case*, p. 194:

"Manifestly the phrases 'to a patient' and 'in the course of his professional practice only' are intended to confine the immunity of a registered physician, in dispensing the narcotic drugs mentioned in the act, strictly within the appropriate bounds of a physician's professional practice, and not to extend it to include a sale to a dealer or a distribution intended to cater to the appetite or satisfy the craving of one addicted to the use of the drug. A 'prescription' issued for either of the latter purposes protects neither the physician who issues it nor the dealer who knowingly accepts and fills it. *Webb v. United States*, 249 U. S. 96."

It is enough to sustain an indictment that the offense be described with sufficient clearness to show a violation of law, and to enable the accused to know the nature and cause of the accusation and to plead the judgment, if one be rendered, in bar of further prosecution for the same offense. If the offense be a statutory one, and intent or knowledge is not made an element of it, the indictment need not charge such knowledge or intent. *United States v. Smith*, 2 Mason, 143; *United States v. Miller*, Fed. Cas. 15,775; *United States v. Jacoby*, Fed. Cas. 15,462; *United States v. Ulrici*, Fed. Cas. 16,594, (opinion by Miller, Circuit Justice); *United States v. Bayaud*, 16 Fed. 376, 383-4; *United States v. Jackson*, 25 Fed. 548, 550; *United States v. Guthrie*, 171 Fed. 528, 531; *United States v. Balint*, *ante*, 250.

It may be admitted that to prescribe a single dose, or even a number of doses, may not bring a physician within the penalties of the act; but what is here charged is that the defendant physician by means of prescriptions has enabled one, known by him to be an addict, to obtain from a pharmacist the enormous number of doses contained in 150 grains of heroin, 360 grains of morphine,

280. HOLMES, McREYNOLDS and BRANDEIS, J.J., dissenting.

and 210 grains of cocaine. As shown by Wood's United States Dispensatory, a standard work in general use, the ordinary dose of morphine is one-fifth of a grain, of cocaine one-eighth to one-fourth of a grain, of heroin one-sixteenth to one-eighth of a grain. By these standards more than three thousand ordinary doses were placed in the control of King. Undoubtedly doses may be varied to suit different cases as determined by the judgment of a physician. But the quantities named in the indictment are charged to have been entrusted to a person known by the physician to be an addict without restraint upon him in its administration or disposition by anything more than his own weakened and perverted will. Such so-called prescriptions could only result in the gratification of a diseased appetite for these pernicious drugs or result in an unlawful parting with them to others in violation of the act as heretofore interpreted in this court within the principles laid down in the *Webb* and *Jin Fuey Moy Cases, supra*.

We hold that the acts charged in the indictment constituted an offense within the terms and meaning of the act. The judgment of the District Court to the contrary should be *reversed*.

*Reversed.*

MR. JUSTICE HOLMES, with whom concurred MR. JUSTICE McREYNOLDS and MR. JUSTICE BRANDEIS, dissenting.

If this case raised a question of pleading I should go far in agreeing to disregard technicalities that were deemed vital a hundred or perhaps even fifty years ago. But we have nothing to do with pleading as such, and as the judge below held the indictment bad it can be sustained only upon a construction of the statute different from that adopted below.

The indictment for the very purpose of raising the issue that divides the Court alleges in terms that the drugs

were intended by the defendant to be used by King in divided doses over a period of several days. The defendant was a licensed physician and his part in the sale was the giving of prescriptions for the drugs. In view of the allegation that I have quoted and the absence of any charge to the contrary it must be assumed that he gave them in the regular course of his practice and in good faith. Whatever ground for scepticism we may find in the facts we are bound to accept the position knowingly and deliberately taken by the pleader and evidently accepted by the Court below.

It seems to me impossible to construe the statute as tacitly making such acts, however foolish, crimes, by saying that what is in form a prescription and is given honestly in the course of a doctor's practice, and therefore, so far as the words of the statute go, is allowed in terms, is not within the words, is not a prescription and is not given in the course of practice, if the Court deems the doctor's faith in his patient manifestly unwarranted. It seems to me wrong to construe the statute as creating a crime in this way without a word of warning. Of course the facts alleged suggest an indictment in a different form, but the Government preferred to trust to a strained interpretation of the law rather than to the finding of a jury upon the facts. I think that the judgment should be affirmed.

---